

James Farrell,
By his } Appellant.
Procheine Amy,

Appeal from the Chancery
of Ireland.

John White, Esq; and
Katherine his Wife.
Samuel Smith,
Mortagh Dowling, Esq;
-----Nangle,

Respondents.

T H E
Respondents C A S E.

Nangle's Mort-
gage, in 1683.

THAT about 1683, Fergus Farrell, Esq; the Appellant's late Father, did Lend unto Robert Nangle, Esq; or as his Surety paid, to several Persons several Sums of Money, amounting to 1416 l. and for Security of Re-payment thereof with Interest, the said Nangle did Mortgage to the said Farrell and his Heirs, several Lands, called Bally-Corky, in the County of Westmeath, and other Lands in the County of Long-ford, in Ireland.

Smith's Bill,
in 1694.

That one William Smith, having a subsequent Mortgage on the said Nangle's Estate, and Dying, the Respondent Samuel Smith, his Son and Heir, Exhibited a Bill in the Chancery of Ireland, against the Appellant's Father, for an Accompt of Profits, and to be let in to Redeem the said Mortgaged Premises; and obtained a Decree for that purpose.

Fergus Farrell
died in 1694.

That the Appellant's Mother Died in 1689; and about 1692, the said Fergus his Father, Married the Respondent Katherine, and had Issue by her a Son, which is Dead, and a Daughter, now Living: And in 1695, was Kill'd in Flanders, and dying Intestate, the Respondent Katherine took out Letters of Administration to him, and thereby became Intituled to all his Personal Estate, and particularly to the Money owing on the said Nangle's Mortgage; whereupon the Respondent Smith, revived his Cause against the Respondent Katherine, as Administratrix to her Husband, and proceeded thereon; and upon settling the Account between the said Parties, there appeared due on the said Mortgage for Principal and Interest, on the 25th day of March, 1699, the Summ of 1698 l. 2 s. 9 d. On Payment whereof, the Respondent Katherine was Decree'd to deliver up the Possession of the said Premises, to the said Respondent Smith, and to Assign to him the said Deed of Mortgage.

1698 l. 2 s. 9 d.
due the 25th
of Mar. 1699.

Bill against
Dowling, in
1699.

That the Appellant's Father having, about 1694, Borrow'd 265 l. of the Respondent Dowling on Bond or Judgment, and for better Security, deposited in his Hands, the Original Deed of Mortgage from Nangle, or made some Assignment thereof; and the said Dowling refusing to deliver up the said Deed on payment of what was due, without the Direction of the Court, the Respondents White and his Wife, about 1699, did Exhibit their Bill against him in the said Court, and obtained a Decree, That on payment of what should appear due, he should deliver up to them the said Deed of Mortgage.

Easter Term,
1698.

Tripartite
Deed, Decem-
ber 18. 1677.

That about Easter Term, 1698, the Appellant Exhibited his Bill in the said Court against the Respondents, White and his Wife, and Smith, to have the Benefit of the said Mortgage in Fee, made to his Father by the said Nangle, on pretence, That the Money so lent by his Father, was part of his Mother's Marriage-Portion; and that her Portion was by Indenture, Tripartite Dated the 18th day of December, 1677. Covenanted to be laid out in Purchase of Lands; to be settled for the benefit of the Issue Male of the said Fergus, on the Body of Ann the Appellant's Mother; And that he being the Eldest Son and Heir of that Marriage, was thereby Intituled to the said Monies.

Cause heard
May 11. 1700.

That the Respondents by Answer, denied that the said Mortgage-Money was any part of the Appellant's Mother's Portion, and that they were Strangers to the Settlement, or Deed in the Bill, as well as to the Covenant for laying out the Portion in Lands, (if any such there were) and insisted, That the said Mortgage, (tho' in Fee, being only a Security for Money) was a Chattle in Equity, and as such, did belong to the Respondent Katherine, as Administratrix; And that the several Debts owing by the Intestate Fergus at his Death, by Bond, Judgment, and otherwise, ought to be paid thereout.

Cause Re-
heard, June
26. 1700.

That the Appellants Cause was then heard before the Judges, who took time to consider of the Matter; and on the 8th of June following, unanimously declared, That the said Money did belong to the Respondents, in Right of Katherine, as Administratrix of the said Fergus, and dismissed the Appellants Bill without Costs.

The Cause was Re-hear'd by the Lord Chancellor, who was pleased to Decree, That the Debts due by the said Fergus Farrell, must in the first place, be paid out of the Money decreed to be paid by Smith; and the Appellant must be paid thereout what Charges he had been at in the said Smith's Suit, and the Respondents must be paid the said Fergus and their own Charges in Smith's Suit; and that as to the Surplus, the Appellant must have one Moiety, and the other Moiety to be divided into two Parts; one Part to the Respondents, and the other to the Child of Fergus, by the said Katherine. And it was further Decreed, That the Money which had been thentofore lodged by the Respondent Smith, in the Hands of Alderman Burton, should be brought into Court, and paid out accordingly; and the Usher was to pay unto the Respondent Dowling, the Money reported due to him, who was thereupon to bring in the Deed of Mortgage, and the Respondents were to Assign the said Mortgage to the Respondent Smith, according to the Decree by him obtained.

From which said Decree, made in the said Farrells Cause, he hath Appealed to your Lordships, and would have the same Reversed, and the said Mortgage-Money Decreed to the Appellant, for that the same, (as he pretends) was part of his Mother's Portion, and his Father was only a Trustee for his Benefit; and the Mortgage being a Mortgage in Fee, the Parties cannot have the benefit of Redemption, without a Conveyance from the Appellant; And insists, the Redemption-Money and Deeds of Mortgage, ought to go with the Estate in Law so vested in him.

But the Respondents humbly Conceive, and are advised, That tho' the said Mortgage was taken in Fee, yet the same will and ought in Equity, to be Construed a Chattle, especially where Creditors are concerned, and insist upon it. That it does not appear by any proofs in the Cause, that the said Mortgage-Money way any part of the Marriage Portion; and if the Appellant had proved any Covenant or Agreement, for laying out the said Marriage-Portion in Lands, yet it appears the same was Voluntary and after the said Marriage, and ought not to affect Creditors.

The Respondents do therefore humbly hope, That the said several Orders and Decrees complained of by the Appellant, are according to the Rules of Law, Equity and Justice; and that the said Appeal shall be dismissed with Costs.

Ric. Turner.